ORIGINAL

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Section 703(e) of the Telecommunications Act of 1996	)	
	)	CS Docket No. 97-151
	)	
Amendment of the Commission's Rules and Policies Governing Pole Attachments	)	

COMMENTS OF GTE
ON PETITIONS FOR RECONSIDERATION

Ward W. Wueste
Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 463-5200

R. Michael Senkowski
Robert J. Butler
Bryan N. Tramont
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

May 12, 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Section 703(e) of the Telecommunications Act of 1996	)	
	)	CS Docket No. 97-151
	)	
Amendment of the Commission's Rules and Policies Governing Pole Attachments	)	

To: The Commission

COMMENTS OF GTE
ON PETITIONS FOR RECONSIDERATION

GTE Service Corporation and its affiliated domestic telecommunications,[1] wireless,[2] and long distance companies[3] (collectively "GTE"), respectfully submits its

---

[1] GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc., and GTE Communications Corporation.

[2] GTE Wireless Incorporated and GTE Airfone Incorporated.

[3] GTE Communications Corporation, Long Distance Division.

comments in response to certain Petitions for Reconsideration filed in the above-referenced docket.[4] GTE believes two issues merit particular attention: (1) the inapplicability of the pole attachment regulations to wireless attachers' rates and private rights-of-way, and (2) the needless use of census categorizations in developing the average number of attaching entities.

I. The Commission Should Maintain a Case-by-Case Approach to Wireless Provider Attachments Consistent With Private Property Rights.

In evaluating wireless attachments, the Commission concluded that "[i]f parties cannot modify or adjust the formula to deal with unique attachments, and the parties are unable to reach agreement through good faith negotiations, the Commission will examine the issues on a case-by-case basis."[5] Teligent attacks this conclusion arguing that the Commission is required to adopt detailed rules addressing the rates charged to wireless providers.[6] Teligent's arguments should be rejected.

---

[4] *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, Report and Order (rel. Feb. 6, 1998) ("Order"). These comments are timely filed. *See* Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding, 63 Fed. Reg. 20633 (Apr. 27, 1998).

[5] Order at ¶ 42.

[6] Petition for Reconsideration and Clarification of Teligent, Inc. at 4 (filed Apr. 13, 1998) ("Teligent").

First, the Commission's NPRM in this matter did not address any type of detailed wireless fee formula. Therefore, adoption of such a formula is beyond the scope of this proceeding.[7]

Second, the Commission's current formula structure is woefully inadequate to address the unique needs of wireless providers. As recognized in the Order, such attachments "are usually more than a traditional box-like device and cable wires strung between poles. They include an antenna or antenna clusters, a communications cabinet at the base of the pole, coaxial cables connecting antennas to the cabinet, concrete pads to support the cabinet, ground wires and trenching, and wires for telephone and electrical service."[8] The current formulas have no ability to address the costs imposed by these additional wireless components. The Commission's case-by-case approach is, accordingly, the only viable policy in light of the unique needs of these providers.[9]

Teligent also argues that the pole attachment provisions should be extended to include access to private rights-of-way. Rights-of-way agreements are governed by state law and do not permit blanket national rules. As the Commission observed in the

---

[7] It may well be helpful to initiate a separate rulemaking to address wireless attachment issues. *See* GTE Reply Comments at 18 (filed Oct. 21, 1997) ("GTE Reply Comments").

[8] Order at ¶ 41.

[9] It is also significant that certain wireless attachments are inherently more valuable than others (due to location or height). In light of these variables and the numerous commercial alternatives available to wireless providers, GTE is skeptical that a standard formula could take all of the relevant factors into account.

First Interconnection Order, "the scope of a utility's ownership or control of an easement or right-of-way is a matter of state law. . . we reiterate that the access obligations of section 224(f) apply when, as a matter of state law, the utility owns or controls the right-of-way to the extent necessary to permit such access."[10] While some easements and rights-of-way for commercial purposes may be alienable and transferable to other companies,[11] such property interests generally cannot be conveyed in a manner that creates an additional burden on the underlying property, as Teligent proposes here.[12] Moreover, many of GTE's rights-of-way are non-assignable.[13] These interests are often negotiated with private property owners and simply do not permit GTE to expand the scope of the right-of-way to include each and every other telecommunications provider that desires access. In light of the important state law considerations implicated in such issues and the limited rights of some current providers, Teligent's efforts to create a national rule should be rejected.[14]

---

[10] Interconnection Order at ¶ 1179.

[11] *See* Roger A Cunningham, *The Law of Property*, § 8.10 at 461 (2d ed. 1993).

[12] *Id.* at § 8.12 at 466.

[13] GTE Reply Comments at 18.

[14] This is particularly true in light of the reverse preemption provision contained in the Commission's enabling statute. See 47 U.S.C. § 224(c).

II. The Commission Should Allow Utilities To Use a Statewide Average in Calculating the Number of Attaching Entities.

GTE agrees with USTA that the Commission's determination to use census categories to establish the average number of attachers[15] is hopelessly and needlessly complicated and should be replaced with a permissive system that allows the use of statewide averages.[16] There are three central problems with the census categorizations adopted by the agency: (1) the pole data is not currently available, (2) the proposed categories overlap, and (3) the system would be immensely burdensome with only marginal gains in accuracy.

First, GTE does not currently maintain the detailed data necessary to calculate the average number of attachers based on the (1) urban, (2) urbanized or (3) rural nature of a pole location. To develop such detailed records for this sole purpose would be a needless waste of resources. Conversely, statewide data on the number of attachers is more readily available and permits calculation of a blended rate for all providers.

Second, the census categories simply do not work from a practical standpoint. The urban and urbanized designations are not mutually exclusive and the resulting

---

15 Order at ¶ ¶ 77-78.

16 Petition for Reconsideration of the United States Telephone Association at 10-11 (filed Apr. 13, 1998); *see also* Petition for Reconsideration and Clarification of SBC Communications Inc. at 10-16 (filed Apr. 13, 1998) ("SBC"); Joint Petition for Clarification And/Or Reconsideration of the Edison Electric Institute and UTC, the Telecommunications Association at 22-23 (filed Apr. 13, 1998) ("Edison").

calculations will be mind-numbingly complex.[17] Moreover, attachers seem unlikely to deploy in areas that track census categories, thereby necessitating multiple rate billing for attaching entities. Such complicated machinations undercut the Commission's stated goal of developing the clear formula that is essential to encourage successful pole attachment negotiations.[18]

Finally, the use of census categories would be tremendously burdensome and expensive without any corresponding public benefit. There is no current mechanism for cost recovery of the substantial inventory and database development costs that would be incurred in the calculation of these figures. Absent a system to require attachers to internalize these costs, incumbents' consumers will unfairly finance this undertaking. Most importantly, the census categories do not generate a significantly more accurate rate calculation. As SBC points out in its Petition, the fact that the Commission uses other statewide data to calculate pole attachment rates suggests that the statewide number of attachers is a logical and fair level of analysis.[19] The use of the more detailed census material thus only creates a sense of "false precision" in the rate formula.[20] Consequently, the Commission should allow the parties to utilize statewide data in developing an average number of attachers.

---

17 *See* SBC at 14-15; Edison at 22.

18 Order at ¶ 16.

19 SBC at 11-13.

20 In addition, by differentiating between the census categories, rural providers will pay a higher rate, thus discouraging service expansion in these areas. SBC at 13.

CONCLUSION

Based on the foregoing, the Commission should deny Teligent's Petition regarding wireless attachments and grant the petitions of USTA, SBC, and Edison regarding the use of census data.

Respectfully submitted,

GTE SERVICE CORPORATION,
on behalf of its affiliated telephone
operating companies

R. Michael Senkowski

R. Michael Senkowski
Robert J. Butler
Bryan N. Tramont
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006

Its Attorneys

Ward W. Wueste
Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 463-5200

May 12, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of May, 1998, I caused copies of the foregoing COMMENTS OF GTE ON PETITIONS FOR RECONSIDERATION to be mailed via first-class postage prepaid mail to the following:

Mary McDermott
Linda Kent
Keith Townsend
Lawrence E. Sarjeant
United States Telephone Association
1401 H Street, N.W. Suite 600
Washington, D.C. 20005-2164

Robert M. Lynch
Durward D. Dupre
Jonathan W. Royston
SBC Communications Inc.
One Bell Plaza, Room 3022
Dallas, Texas 75202

David L. Swanson
Edison Electric Institute
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Jeffrey L. Sheldon
Sean A. Stokes
UTC, The Telecommunications Association
1140 Connecticut Avenue, N.W.
Suite 1140
Washington, D.C. 20036

Joseph DiBella
Bell Atlantic
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

Cindy Z. Schonhaut
ICG Communications, Inc.
161 Inverness Drive West
Englewood, Colorado 80112

Albert H. Kramer
Dickstein, Morin, Shapiro & Oshinsky
2101 L Street, N.W.
Washington, D.C. 20037-1526

James T. Hannon
Suite 700
1020 19th Street, N.W.
Washington, D.C. 20036

Daniel L. Brenner
David L. Nicoll
National Cable Television Association
1724 Massachusetts Avenue, N.W.
Washington, D.C. 20036

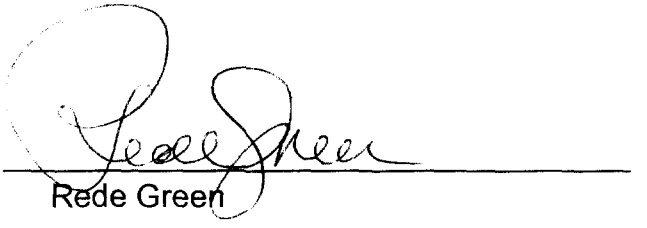
Paul Glist
John Davidson Thomas
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, NW, Suite 200
Washington, DC 20006

Laurence E. Harris
David S. Turetsky
Teligent, Inc.
Suite 400
8065 Leesburg Pike
Vienna, VA 22182

Philip L. Verner
Gunnar D. Halley
Willkie Farr & Gallagher
1155 21st Street, N.W.
Washington, D.C. 20036

Lawrence Fenster
MCI Telecommunications Corporation
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

*International Transcription Service
1231 20th Street, NW
Washington, DC 20036



Rede Green

*By hand delivery